

AT UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CORNELL UNIVERSITY  
LITIGATION

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) Case No. 14-cv-9662 (JSR)  
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**DECLARATION OF JOSÉ ROGÉRIO CRUZ E TUCCI IN SUPPORT OF  
INTERVENOR'S MOTION TO INTERVENE AND UNSEAL FILINGS,  
AND FOR AN ORDER PURSUANT TO 28 U.S.C. §1782 GRANTING LEAVE TO  
OBTAIN DISCOVERY FOR USE IN A FOREIGN PROCEEDING**

I, José Rogério Cruz e Tucci, declare as follows:

1. I have been a lawyer registered with the Brazilian Bar Association, São Paulo section, since 1979. My practice specializes in civil litigation and arbitration. In 1998 and 1999, I was the President of the Association of Attorneys of São Paulo. Since 1987, I have been a Full Professor of Civil Procedure Law at the University of São Paulo Law School in Brazil. From February 2014 to February 2018, I was also the Director of the University of São Paulo Law School. I hold a Ph.D in Civil Procedure Law from the University of Rome, and a Master's Degree in Civil Procedure Law from the University of São Paulo. A copy of my *curriculum vitae* is attached hereto as Exhibit 1.

2. I was retained by Cornell University through its attorneys, Robbins Geller Rudman & Dowd LLP, to submit this Declaration. Cornell University has initiated an arbitration proceeding in Brazil seeking compensation from false statements and omissions of material information by Petrobras in the Brazilian Capital Markets ("Cornell University's Arbitration"). This Declaration aims to describe the scope of discovery that will be available to participants in the Cornell University's Arbitration before the Market Arbitration Chamber ("MAC") of the São Paulo Stock Exchange ("Bovespa"). I was also asked to analyze whether the arbitration panel would be receptive to judicial assistance from a U.S. federal court in obtaining discovery for use in the arbitration, and whether such assistance would circumvent any proof-gathering restrictions or other policies of Brazil.

3. With regard to evidence production, the main rules applicable to the Cornell University's Arbitration are the Brazilian Code of Civil Procedure ("CPC") and the Brazilian Arbitration Act ("BAA").

4. Under the CPC there is no discovery and requests for production of evidence and documents are extremely limited comparatively. The party who deems a piece of evidence as significant has the burden to present it to the court or arbitration panel, unless proving that it does not possess the evidentiary piece, in which case it may request the Court to compel the other party to produce it. Such requests, nevertheless, require a detailed description of the individualized pieces of evidence and a statement of reasons why it is relevant to the dispute and the circumstance upon which the applicant bases the affirmation that the document is in the possession of the adversary party (according to articles 396 through 404 of the CPC).

5. Further, and according to article 434 of the CPC, the parties have the burden to present all documents aimed at proving their allegations. The insertion of documents into the records normally takes place in the complaint or in the response. The later introduction of documents is also admissible according to the article 435 of the CPC, but under two specific circumstances: if documents (i) became known, accessible or available after the complaint or the answer were presented; (ii) are being presented to counterargument allegations and / or documents introduced by the other party in its complaint or answer. In that case, the party who deems to produce the documents must prove why he or she was unable to enter them into the records previously, the judge having the discretion, in each case, to assess the conduct of the party pursuant to good faith.

6. Within Brazilian jurisdiction, the judge may also request from government departments, and even from other Brazilian courts, all the documents and certificates required to prove pleadings and defenses.

7. The judge may as well allow the usage of evidence produced in another action, attributing it the value deemed appropriate, observing the principle of *audi alteram partem*,

according to article 369 of the CPC. In such case, the request of evidence produced in another action can also be made to a foreign court, provided that the party which has the burden specifies the documents intended to be presented to the court, further indicating the need of assistance from the foreign court and knowledge of the documents that are included in the relevant judicial procedure.

8. The BAA does not specifically provide for this matter. However, the BAA expressly establishes that the CPC shall apply when the BAA is silent. Therefore, despite the parties' autonomy to agree on the procedure to be adopted in an arbitration, they must also ensure that the evidence production complies with the law of the arbitration seat (or *lex arbitri*) to minimize the chances of judicial annulment of the arbitral award.

9. Consequently, it is extremely unusual for the parties to an arbitration in Brazil to adopt broad-ranging discovery tools such as extensive documents requests and witness depositions. First because it departs from the CPC and local practice, but further, because the claimant cannot compel the defendant to accept such kind of evidence production.

10. For the purpose of this declaration I was also provided with the Cornell University's Arbitration Term of Reference, which sets forth that the production of evidence in the Cornell University's Arbitration will be governed by the BAA and by the Brazilian civil procedure general rules (articles 369 through 484 of the CPC).

11. According to the applicable rules, the parties have the right to employ all the legal, as well as morally legitimate, means to prove the truth of the facts on which the claim or the defense is based on, in order to effectively convince the judge or the arbitration panel.



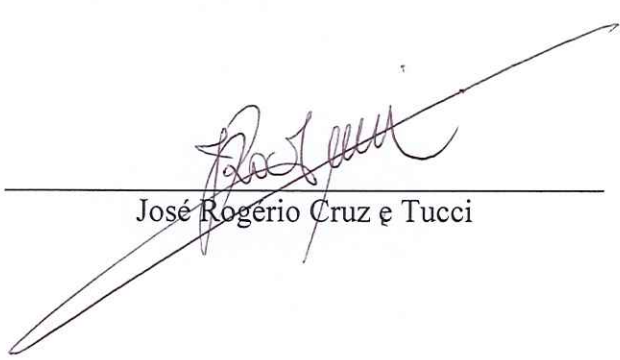
12. Also according to rule 4.6 of the MAC, all evidence shall be produced before the Arbitration Tribunal, which is entitled to decide what evidence is useful and necessary to settle the dispute and establish the procedures and order to produce evidence.

13. In view of the foregoing, I hold the opinion that the arbitration panel would most certainly be receptive to judicial assistance from a U.S. federal court in obtaining discovery for use in Cornell University's Arbitration, as the discovery obtained with the cooperation of a U.S. federal court will: (i) not circumvent any proof-gathering restrictions or other policies and principles of the CPC; (ii) most likely be of great contribution to the case; and (iii) not cause any harm to the defendant, as it will remain confidential by all means.<sup>1</sup>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15 day of April, 2019.

By:



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José Rogerio Cruz e Tucci

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<sup>1</sup> According to rule 9.1 of the MAC, arbitration proceedings are confidential and all parties, arbitrators and members of the arbitration chamber shall refrain from disclosing any information relating to such proceedings, except in compliance with the instructions or rules of regulatory bodies and with the applicable legislation.

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on May 10, 2019, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ SAMUEL H. RUDMAN

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Aberdeen Canada Socially Responsible International Fund

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Aberdeen Canada Funds EAFE Plus Equity Fund and Aberdeen Canada Funds Global Equity Fund, each a series of Aberdeen Canada Funds

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Aberdeen EAFE Plus Ethical Fund, Aberdeen EAFE Plus Fund, Aberdeen EAFE Plus SRI Fund, Aberdeen Emerging Markets Equity Fund, and Aberdeen Global Equity Fund

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Aberdeen Emerging Markets Fund, Aberdeen Global Equity Fund

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Aberdeen Fully Hedged International Equities Fund

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Aberdeen Global Emerging Markets Equity Fund

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Aberdeen Global Natural Resources Fund

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Aberdeen Global ex Japan Pension Fund ppit

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Aberdeen International Equity Fund, each a series of Aberdeen Funds; Aberdeen Canada Emerging Markets Fund

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Aberdeen Latin America Equity Fund, Inc.

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Bell Aliant Regional Communications Inc.

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Catherine O. Bishop  
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San Antonio, TX 78209

Board of Education Retirement System of the City of New York

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DFA Australia Limited solely in its capacity as responsible entity for the Dimensional Emerging Markets Trust

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